

# **EXHIBIT 12**

## **(Redacted)**

**(Previously Filed Under Seal as DI 503-9)**

1  
2 UNITED STATES DISTRICT COURT  
3 DISTRICT OF MINNESOTA

4 -----X  
5 FAIR ISAAC CORPORATION,

6 PLAINTIFF,

7 -against-

8 Case No.:  
9 16-cv-1054

10 FEDERAL INSURANCE COMPANY and  
11 ACE AMERICAN INSURANCE COMPANY,

12 DEFENDANTS.

13 -----X

14 DATE: February 26, 2019

15 TIME: 10:06 A.M.

16 DEPOSITION of a Non-Party  
17 Witness, LAWRENCE WACHS, taken by the  
18 respective parties, pursuant to a  
19 Subpoena and to the Federal Rules of  
20 Civil Procedure, held at the offices of  
21 Merchant & Gould, P.C., 767 3rd Avenue,  
22 23rd Floor, New York, New York 10017,  
23 before Jennifer Schwartz, a Notary  
24 Public of the State of New York.  
25

A P P E A R A N C E S:

MERCHANT & GOULD, P.C.  
Attorneys for the Plaintiff  
FAIR ISAAC CORPORATION  
767 3rd Avenue, 23rd Floor  
New York, New York 10017  
BY: ALLEN W. HINDERAKER, ESQ.  
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FREDRIKSON & BYRON, P.A.  
Attorneys for the Defendants  
FEDERAL INSURANCE COMPANY and  
ACE AMERICAN INSURANCE COMPANY  
200 South Sixth Street, Suite 4000  
Minneapolis, Minnesota 55402  
BY: LEAH C. JANUS, ESQ.  
ljanus@fredlaw.com

ALSO PRESENT:  
James Woodward -  
Fair Isaac Corporation  
Kevin Marth -  
Videographer

\* \* \*

F E D E R A L S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by  
and between the counsel for the  
respective parties herein that the  
sealing, filing and certification of the  
within deposition be waived; that the  
original of the deposition may be signed  
and sworn to by the witness before  
anyone authorized to administer an oath,  
with the same effect as if signed before  
a Judge of the Court; that an unsigned  
copy of the deposition may be used with  
the same force and effect as if signed  
by the witness, 30 days after service of  
the original & 1 copy of same upon  
counsel for the witness.

IT IS FURTHER STIPULATED AND AGREED  
that all objections except as to form,  
are reserved to the time of trial.

\* \* \* \*

1  
2 THE VIDEOGRAPHER: Good  
3 morning. This is the  
4 videographer speaking. My name  
5 is Kevin Marth, here on behalf of  
6 Depo International. Today's date  
7 is February 26th, 2019, and the  
8 time is 10:07 a.m. We are at the  
9 offices of Merchant & Gould in  
10 New York, New York, to take the  
11 video deposition of Mr. Lawrence  
12 Wachs in the matter of Fair Isaac  
13 Corporation versus Federal  
14 Insurance Company and ACE  
15 American Insurance Company in the  
16 U.S. District Court of Minnesota.  
17 At this time would counsel please  
18 introduce yourselves for the  
19 record.  
20 MR. HINDERAKER: Allen --  
21 oh, sorry. Go ahead.  
22 MS. JANUS: Leah Janus,  
23 Fredrikson & Byron for  
24 defendants.  
25 MR. HINDERAKER: Allen

Page 4

1  
2 Hinderaker, Merchant & Gould,  
3 along with Jim Woodward, vice  
4 president deputy general counsel  
5 of FICO, on behalf of the  
6 plaintiffs or the plaintiff.  
7 THE VIDEOGRAPHER: At this  
8 time would the court reporter  
9 please swear in the witness and  
10 we may proceed.  
11 L A W R E N C E W A C H S, called as a  
12 witness, having been first duly sworn by  
13 a Notary Public of the State of New  
14 York, was examined and testified as  
15 follows:  
16 EXAMINATION BY.  
17 MS. JANUS:  
18 Q. Please state your name for the  
19 record.  
20 A. My name is Lawrence Wachs.  
21 Q. And what is your address?  
22 A. 912 Whitehall Drive, Valley  
23 Stream, New York 11581.  
24 Q. Mr. Wachs, my name is Leah  
25 Janus, I represent the defendants in

Page 5

1  
2 the lawsuit that you are here to  
3 testify in. We have not met before  
4 today, correct?  
5 A. That's correct.  
6 Q. Are you represented by counsel  
7 for FICO here today?  
8 A. I am.  
9 Q. Okay. Have you had your  
10 deposition taken before?  
11 A. In this matter?  
12 Q. Ever.  
13 A. Yes.  
14 Q. Okay. I take it then you're  
15 relatively familiar with how this  
16 works, but just so that we're on the  
17 same page, you're here to provide  
18 testimony, you understand you're under  
19 oath, correct?  
20 A. I do.  
21 Q. Okay. So you're providing  
22 testimony as if you are in a court of  
23 law before a judge and a jury, you  
24 understand that?  
25 A. I do.

Page 6

1  
2 Q. I'll ask you questions. When  
3 you answer, it's important that you use  
4 words rather than shrugs or gestures,  
5 okay?  
6 A. Fine.  
7 Q. If you don't understand a  
8 question that I've asked you, please  
9 ask me to rephrase it or restate it and  
10 I will. If you don't do that, I will  
11 assume that you've understood, fair?  
12 A. Good.  
13 Q. Okay. I want to start just with  
14 a little bit of background information.  
15 Where did you receive your education  
16 and tell us what degrees you obtained.  
17 A. I obtained a degree -- bachelor  
18 of arts degree with a major in  
19 economics from Brooklyn College in  
20 1968.  
21 Q. In what year were you born?  
22 A. 1947.  
23 Q. Are you currently employed?  
24 A. No.  
25 Q. What was your last -- most

Page 7

1  
2 Unless you have something there, I  
3 can't remember that.  
4 Q. Did you review documents from  
5 2008 in preparation for the deposition  
6 today, if you recall?  
7 **A. I believe so. If they were part**  
8 **of discovery, I saw them.**  
9 Q. Do you have a recollection of  
10 Mike Sawyer or Russ Schreiber  
11 approaching you to discuss the Chubb  
12 license in late 2008?  
13 **A. Not specifically, no.**  
14 Q. I'm showing you what's been  
15 marked as deposition Exhibit 73. This  
16 is an appointment from Mike Sawyer to  
17 Ian Brody, Richard Hill, and Russ  
18 Schreiber, correct?  
19 **A. That's correct.**  
20 Q. Do you know who Ian Brody and  
21 Richard Hill are?  
22 **A. No, I do not.**  
23 Q. And in the note to the  
24 appointment, it says, "All please join  
25 this call to discuss the Chubb license  
Page 168

1  
2 agreement and plan -- and the plan for  
3 Chubb Europe. Attached are the three  
4 SLSA contracts and the latest Chubb  
5 annual report," correct?  
6 **A. Correct.**  
7 Q. Was it your understanding at  
8 this point that Chubb had approached  
9 FICO about using Blaze in Europe?  
10 MR. HINDERAKER: Objection,  
11 lack of foundation.  
12 **A. I was not an invitee at this**  
13 **meeting and I can't say that I remember**  
14 **the specifics of the meeting.**  
15 Q. Okay. And I'm just using this  
16 date to ask you whether -- as someone  
17 who was involved with the Chubb  
18 account, whether you have a  
19 recollection of Chubb discussing...  
20 **A. No, I do not.**  
21 Q. You know, having access to Blaze  
22 in Europe pursuant to enterprise  
23 license agreement?  
24 **A. No, I do not. No recollection.**  
25 Q. Do you recall that around this  
Page 169

1  
2 time you were asked to look into the  
3 Chubb license agreement in connection  
4 with Chubb's request to have access to  
5 Blaze in Europe?  
6 **A. Conceivably, but I don't**  
7 **remember the specifics of that**  
8 **conversation. I believe there's an**  
9 **e-mail to that effect though.**  
10 Q. Okay. So do you recall that you  
11 actually concluded that the ELA that  
12 was negotiated with Chubb was a global  
13 ELA?  
14 **A. From the wording here, I cannot**  
15 **conclude -- make that conclusion.**  
16 Q. So I've handed you -- before you  
17 go into the e-mail, I was asking the  
18 question whether you recalled  
19 concluding that it was a global ELA. I  
20 take it you don't have a recollection  
21 of that?  
22 **A. I do not have a recollection of**  
23 **that.**  
24 Q. So I've handed you what's been  
25 marked as Exhibit 116. Is this one of  
Page 170

1  
2 the documents you reviewed to prepare  
3 for your deposition?  
4 **A. Yes.**  
5 Q. This is an e-mail from you to  
6 Russ Schreiber dated November 26th,  
7 2008, correct?  
8 **A. That's right.**  
9 Q. So this is about a  
10 week-and-a-half after -- or two -- a  
11 little less than two weeks after the  
12 appointment planner that we looked at  
13 which was marked Exhibit 73, correct?  
14 **A. Right.**  
15 Q. I'll give you a chance to review  
16 the e-mail, let me know when you've  
17 done that.  
18 **A. Yeah, I reviewed the document.**  
19 Q. Having reviewed the document, do  
20 you recall what led you to writing this  
21 e-mail?  
22 **A. It appears that it was a request**  
23 **by Russ Schreiber for my views on the**  
24 **status of the ELA and whether it did**  
25 **include a global provision or not.**  
Page 171

1  
2 Q. And do you recall actually  
3 having a conversation with Russ  
4 Schreiber on that topic?  
5 **A. No, I don't have a recollection**  
6 **of that.**  
7 Q. You state that in reviewing your  
8 notes and some archived e-mails, "it's  
9 apparent to me that the corporate ELA  
10 that was negotiated with Phil Folz and  
11 June Drewry intended to include the  
12 global license, correct?  
13 **A. That is what I stated.**  
14 Q. So you concluded after reviewing  
15 archived e-mails and your notes that  
16 the ELA was a global license?  
17 **A. That, I don't agree with**  
18 **necessarily. It says that it's**  
19 **apparent that it intended to include**  
20 **the global license but I can't tell you**  
21 **specifically that it did.**  
22 Q. Okay. What is the distinction  
23 between what you're saying and what I  
24 said?  
25 **A. Well, the way I worded it, it's**  
Page 172


1  
2 apparent that it intended to include a  
3 global license. The question is in the  
4 final what was actually paid by Chubb  
5 would indicate that there's a  
6 difference of about [REDACTED] and I  
7 don't see the wording, for example,  
8 change from a definition of territory,  
9 so there's some evidence that it did  
10 not include -- that it was never  
11 finally accepted as global but I don't  
12 have the e-mail or any thread from Phil  
13 -- from Mark Laden to indicate what was  
14 finally agreed on at that private  
15 meeting that he attended, so I can't  
16 draw that conclusion. It's apparent  
17 that they wanted global but I don't  
18 know if it ever came to fruition.  
19 Q. So you just don't know -- but  
20 you believe that it was intended to  
21 include --  
22 **A. That's correct.**  
23 Q. -- the ELA was intended to  
24 include the global license?  
25 **A. That is what I said.**  
Page 173

1  
2 MR. HINDERAKER: We'll rely  
3 on the testimony on the record.  
4 Q. And then you say, "In my  
5 recollection, they --" meaning Chubb  
6 -- "were adamant about keeping global  
7 on the table," correct?  
8 **A. That's right.**  
9 Q. But they did take COBOL's smart  
10 forms off the table to wait for  
11 projects requiring that functionality,  
12 correct?  
13 **A. That's what I said, yes.**  
14 Q. Okay. Now, did you -- do you  
15 recall talking with Russ Schreiber  
16 after you sent this e-mail?  
17 **A. No, I do not.**  
18 Q. Did you recall talking with  
19 anyone else at FICO relating to your  
20 conclusion that's set forth in the  
21 e-mail marked as 116?  
22 **A. No, I do not.**  
23 Q. Do you know whether, in fact,  
24 after November of 2008 FICO assisted  
25 Chubb in implementing the Blaze Advisor  
Page 174

1  
2 software in Europe?  
3 MR. HINDERAKER: Objection,  
4 lack of foundation.  
5 **A. I don't believe that that was**  
6 **the way I read the e-mail from the**  
7 **invitation of Mike Sawyer when he**  
8 **states that to -- license agreement and**  
9 **a plan for Chubb Europe, he's talking**  
10 **about a sales opportunity.**  
11 Q. So you don't know whether FICO  
12 interpreted the enterprise license  
13 agreement going forward as including  
14 global access or not, you just don't  
15 know?  
16 **A. I don't know.**  
17 Q. What notes are you referring to  
18 in your e-mail marked as 116?  
19 **A. It would be the notes that --**  
20 **the e-mails that you produced here**  
21 **clearly, notes would have been perhaps**  
22 **notebooks of -- as I attended meetings,**  
23 **I may have taken notes at the meeting**  
24 **but --**  
25 Q. So handwritten notes that you  
Page 175



1  
2 year they did succeed in accepting  
3 considerably more business than they  
4 had in the previous year for no  
5 increase of staff.  
6 Q. This is identified in an earlier  
7 deposition as Exhibit 330, dated  
8 November 3, 2006. Placing a time, it's  
9 after the June license agreement, it's  
10 after the divisional and it's before  
11 the second amendment. Do you know who  
12 prepared Exhibit 330?  
13 **A. I did.**  
14 Q. And what was the purposes of  
15 Exhibit 330?  
16 **A. Sales training within FICO.**  
17 Q. So internal -- internal to FICO?  
18 **A. Yes.**  
19 Q. And I think maybe the title  
20 tells us what we need to know, but  
21 would you just give us a general  
22 description of what this document was  
23 intended to say and teach?  
24 **A. It was a full client journey**  
25 **document here which described the**  
Page 200

1  
2 business need, the intended solution,  
3 how we built the solution, and the  
4 results of the implementation.  
5 Q. Okay. And is this fair to say  
6 that this summarizes your firsthand  
7 experience in that process of selling  
8 to Chubb?  
9 **A. Certainly.**  
10 Q. Maybe just a couple more  
11 questions about this. If you go to the  
12 page that is 5877 where it says Chubb  
13 specialty insurance business and it has  
14 the bullet points.  
15 **A. Yes.**  
16 Q. What was the source of this  
17 information that's on this letter?  
18   
Page 201

1  
2 about what would have come from the  
3 annual report.  
4 Q. And then on the next page, which  
5 is 5878, my same -- same question:  
6 What was the source of your  
7 understanding of the Chubb current  
8 state?  
9 **A. Initially, in that first**  
10 **response, it was the RFI, and it was**  
11 **refined through subsequent weekly**  
12 **conversations with the technology team**  
13 **headed by Sully.**  
14 Q. And then on the next page, 5879,  
15 you lay out the vision statement and  
16 then you lay out success criteria, do  
17 you know if the success -- do you know  
18 if the success criteria were met?  
19 **A. I do know that they automated**  
20 **their renewals in short order. I do**  
21 **know that from the testimony of the**  
22 **businesspeople that they did -- were**  
23 **able to access and modify the rules and**  
24 **through the analysis tools of the Blaze**  
25 **Advisor product, they would be able to**  
Page 202

1  
2 know which rules are the best rules and  
3 which rules are the worst rules and, in  
4 effect, modify them accordingly.  
5 Q. I'm going to change topics a  
6 little bit and if you could find  
7 Exhibit 113 as well as Exhibit 110,  
8 which is an agreement, software license  
9 agreement. Exhibit 113 is the -- your  
10 e-mail of December 12, 2006.  
11 **A. You said 113?**  
12 Q. Yeah, 113. If I could help you,  
13 I would. It looks like this.  
14 **A. I don't have it.**  
15 Q. All right. I've got it here.  
16 Let's work off of my copy.  
17 **A. Okay.**  
18 Q. 113. And then if you'd get the  
19 amendment number 2 in front of you from  
20 the 110 exhibit.  
21 **A. Did you say 110?**  
22 Q. Yeah, it's a license agreement.  
23 Here we go, this is it, this is 110.  
24 **A. Okay.**  
25 Q. So find in 110 amendment number  
Page 203



1  
2 2, it's on -- its Bates number is 1718  
3 on the bottom right-hand corner.  
4 **A. Yep.**  
5 Q. Okay. As you saw -- as we saw  
6 in your earlier testimony when you go  
7 to the second page, amendment number 2,  
8 there is no limitation on the number of  
9 development seats, agreed -- or  
10 developer seats?  
11 **A. Agreed.**  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 **A. Agreed.**  
24 Q. Now, if you could find  
25 Exhibit 112, please.

Page 204

1  
2 **A. Yeah.**  
3 Q. You were asked about this  
4 exhibit, of course, and you were  
5 directed to the second question on the  
6 second page and I'm going to direct you  
7 to that and without rereading the  
8 question number 2, under that is your  
9 response being "there are no usage or  
10 redistribution restrictions within  
11 Chubb in any of the options within the  
12 seat limitations of options 1 and 2,"  
13 understood?  
14 **A. Right.**  
15 Q. So my question with respect --  
16 my question with respect to your answer  
17 is whether you had any meaning of Chubb  
18 other than Chubb the client in terms of  
19 the license agreement?  
20 **A. I never differentiated,**  
21 **unfortunately.**  
22 MR. HINDERAKER: Thank you  
23 for your time. That's my  
24 questions.  
25 THE WITNESS: Sure.

Page 205

1  
2 THE VIDEOGRAPHER: This  
3 concludes the deposition. We are  
4 going off the record at 3:50 p.m.  
5 (Whereupon, at 3:50 P.M.,  
6 the Examination of this witness  
7 was concluded.)  
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Page 206